

Issue: Business/Non-Business (General)
1005 Penalty (Reasonable Cause Issue)

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
) Case No.: XXXXX
v.) FEIN: XXXXX
)
XXXXX,) Harve D. Tucker,
Taxpayer) Administrative Law Judge

FINDINGS OF FACT

1. The Taxpayer is basically what is left of all of the investments of XXXXX, who died in 1981. The investments included XXXXX, XXXXX, XXXXX basketball team and oil and gas properties and cattle ranches in Colorado and Nevada. The truck lines were sold in April, 1986, although many of them were retained by the Taxpayer and then leased to third parties. This is the Taxpayer's primary business operation.²

2. During the audit period, the Taxpayer owned 100% of the following subsidiaries, which were included in the Taxpayer's consolidated US 1120:3

a. XXXXX. This company owned XXXXXContinental Truck Wash in Los Angeles and truck trailers leased to a firm in the Denver area.

b. XXXXX. This company was inactive although it held some property on the books used by the truck wash in Los Angeles.

c. XXXXX. This company was set up to act as a holding company for the Taxpayer's investment in XXXXX, a limited partnership in the Denver area which invested in stocks. The Taxpayer started investing in this limited partnership in 1978 and eventually had a \$789,000 investment by 1990. In 1990, the Taxpayer learned that its entire investment was worthless, all of the investors having lost about \$300 million. The Taxpayer's portion of the gain and subsequent loss was reported in the Illinois return as non-business income.

3. The Taxpayer filed on a separate basis for all years. It was determined that the Taxpayer should have filed on a unitary basis to include the three subsidiaries. The Taxpayer agrees with this adjustment.⁴

4. The Taxpayer claimed as non-business all of the income from intangibles on the federal income tax return.⁵

5. Most of the interest income was received from non-unitary affiliates or money market accounts.⁶

6. Dividend income came from a money market fund operated by Kemper.⁷

7. Royalties were received from oil and gas properties.⁸

8. Capital gains were generated from installment sales of truck terminals and income from the limited partnership.⁹

9. The main unagreed issue is the income/loss received from XXXXX, the limited partnership.¹⁰

CONCLUSIONS OF LAW The Illinois Income Tax Act, 35 ILCS 5/1501(a)(1) defines business income as:

. . . income arising from transactions and activity in the regular course of the taxpayer's trade or business, net of the deductions allocable thereto, and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

Illinois Administrative Code, Ch. I (hereinafter Regulation or Reg.) Sec. 3050(a) further provides that a person's income is business income unless it is clearly classifiable as nonbusiness income. Nonbusiness income means all income other than business income.¹¹

If the income is classified as business income, it is apportionable under 35 ILCS 5/304(a) and includible in Illinois taxable income. If it is nonbusiness income, it is allocated to the Taxpayer's commercial domicile in Colorado under 35 ILCS 5/301(c)(2)(B).

The Taxpayer's primary business is to invest excess cash in (hoped for) profitable ventures. The Taxpayer does not operate any of the businesses it owns.¹² It has only six employees who monitor all investment activities of the Taxpayer.

The Taxpayer argues that the partnership has no trade or business. It has no employees, no tangible property and no business income. The partnership generates only portfolio (investment) income. It is only an investment vehicle.¹³ The Taxpayer's facts are correct but its conclusion is erroneous. There is nothing to justify the conclusion that business income is limited to "operating" income. The partnership's trade or business is investment and all of its income is business income. To argue that an investment company has no trade or business and, therefore, no

business income, strains logic. The holding of these investments is not unrelated to their trade or business - it is their trade or business.

Non-resident partners take into account their respective share of the partnership's business income. All income is business income unless there is clear demonstration that it is non-business. The Taxpayer has not demonstrated why the partnership income is non-business. The Notice of Deficiency is sustained.

Harve D. Tucker
Administrative Law Judge

Date:

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- 1 35 ILCS 5/1005
 - 2 Auditor's Report, General Background Information, at p.1 of 2.
 - 3 Id.
 - 4 Auditor's Report, Discussion of Issues, at p.1 of 4
 - 5 Id.
 - 6 Id.
 - 7 Id.
 - 8 Id., at p.2 of 4
 - 9 Id.
 - 10 Id.
 - 11 See also 35 ILCS 5/1501(a)(13)
 - 12 Although the Taxpayer owns and leases out truck terminals, the Taxpayer does not operate these terminals.
 - 13 See letter from CPA to Illinois Department of Revenue Auditor, dated June 4, 1993.